



Under this formula, Jay received 17 percent of the assets and Leslie received 83 percent of the assets.

On appeal, Jay challenges the property division. We affirm the property division, concluding that the property division was not inequitable nor an abuse of discretion.

### FACTS

Leslie and Jay dissolved their approximately eight-year marriage in 2008. After a four-day trial, the court divided the couple's property and filed a memorandum opinion and findings of fact and conclusions of law. The following facts reflect the court's findings and conclusions.

Leslie Peppin graduated from high school in 1976 and attended Western Washington University for two years. She began a career working for various mortgage companies in western Washington. In 1989, she married Steve Frison and the couple had two children, Logan and Quinton, now 16 and 13 respectively. The children have always resided with their mother. In 1996, Steve Frison died suddenly at the age of 47, when Quinton was only six weeks old.

Until the birth of her children, Leslie enjoyed relatively good health, except for some joint pain. After Logan's birth, the joint pain increased and tended to pervade her life. After Steve's death, Leslie's health was problematic. She suffered from lupus

and/or fibromyalgia. She had trouble walking without assistance and she was in constant pain and lacked strength.

After Steve's death, Leslie continued to live in the Edmonds, Washington, family home. Leslie received all of the assets of the marriage, which were substantial. Leslie's primary goal after Steve's death was to provide security for her children.

Leslie met Jay Wilson in 1997. Jay lived in Seattle and owned some claims adjusting businesses. He specialized in adjusting maritime claims. The couple began cohabitating in the fall of 1998. They married in the summer of 1999. Jay did not adopt Leslie's children.

Before the marriage, the couple purchased property in Cle Elum, with an undivided one-half interest belonging to each. At the time of the marriage, Leslie owned almost \$9 million in assets. Jay claimed he owned \$2 million in assets.

Shortly after the marriage, the couple purchased property in Snoqualmie, Washington. After selling the home in Edmonds, the couple moved onto the property intending to build there.

At the time of the marriage, Jay claimed nearly \$2 million in assets, comprised mainly of a one-half interest in the Cle Elum property and two businesses—Pacific Claims, Inc. and Stop Loss.

Jay sold Pacific Claims, Inc., shortly after the marriage. Pacific Claims was sold for substantially less than the price he included in his list of assets. Jay had not told Leslie prior to the marriage that while he valued Pacific Claims at \$1.275 million, he also had two partners in the business. The assets sold for \$425,000, but Jay realized very little because he had to pay off other shareholders. Then, within months of the sale, Jay was forced to buy back Pacific Claims for \$150,000, using Leslie's money, because he had no liquid assets.

At the time of the couple's marriage, Jay represented that his one-half interest in Stop Loss was valued at \$500,000 plus. However, the evidence showed that, other than paying for health insurance for a few years during the marriage, Jay received nothing from his investment in Stop Loss.

The couple lived in, and owned property in, Snoqualmie, Fall City, and near Cle Elum. The couple also built a new home on Plum Creek. They owned investment property at Suncadia and Trumble Creek, and also owned numerous items of personal property.

The trial court distributed the couple's separate and community property such that Leslie received 83 percent and Jay received 17 percent. The court did not total the awards.

The parties disagreed as to whether Leslie willingly gifted her separate property to Jay as community property or whether he coerced her into converting her assets to community property. The court found that while Leslie may not have initially wanted to place Jay's name on the accounts, she ultimately did so, if reluctantly, for the good of the marriage. The parties also disagreed whether Leslie insisted that Jay stop working or whether he stopped working on his own because of Leslie's wealth. The court found that Leslie did not insist that Jay stop working, but she did not object when he did so for the sake of the marriage.

#### ANALYSIS

A property division made during a dissolution proceeding will be reversed on appeal only if there is a manifest abuse of discretion. *In re Marriage of Kraft*, 119 Wn.2d 438, 450, 832 P.2d 871 (1992). Discretion is abused if a decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). The use of fault in a marital dissolution division of property is an abuse of discretion. *In re Marriage of Muhammad*, 153 Wn.2d 795, 797-98, 108 P.3d 779 (2005).

When dividing marital property, the trial court must make a disposition of the property that "shall appear just and equitable after considering all relevant factors."

RCW 26.09.080. This includes, but is not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage; and
- (4) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time.

Former RCW 26.09.080 (1989).

The trial court may also consider such factors as “the health and ages of the parties, their prospects for future earnings, their education and employment histories, their necessities and financial abilities, their foreseeable future acquisitions and obligations, and whether the property to be divided should be attributed to the inheritance or efforts of one or both of the spouses.” *In re Marriage of Olivares*, 69 Wn. App. 324, 329, 848 P.2d 1281 (1993).

Here, the court specifically concludes that RCW 26.09.080 and case law guided its disposition of all of the property. The court listed and valued each asset and awarded each asset to a party. The court divided the property between the parties based on the percentage of assets each party provided when they entered the marriage. Jay received 17 percent of the assets and Leslie received 83 percent. Jay had provided some inflated values when stating his assets at the beginning of the marriage. Yet, the court adopted the

inflated values when determining his percentage of the assets. And the court considered the origin of the property. *See In re Marriage of Nuss*, 65 Wn. App. 334, 341, 828 P.2d 627 (1992).

*Just and Equitable.* Jay argues that before no fault divorce was adopted, the general rule was that a one-third/two-thirds division of community property was inequitable in a case where fault was not an issue. He maintains that a 40-60 split in favor of Leslie would be a fair and equitable division of the community property from their eight-year marriage. To support his argument, Jay relies on *Wills v. Wills*, 50 Wn.2d 439, 312 P.2d 661 (1957). However, *Wills* involved a long-term marriage, approximately 16 years, and was decided before the no fault principle was adopted in Washington. *Id.* at 440-41.

RCW 26.09.080 requires a fair and equitable division by the trial court. A fair and equitable division requires fairness, not mathematical precision. *In re Marriage of Crosetto*, 82 Wn. App. 545, 556, 918 P.2d 954 (1996). The primary consideration is the parties' economic circumstances upon dissolution. *Olivares*, 69 Wn. App. at 330. The trial court did not abuse its discretion by considering the relevant factors of RCW 26.09.080 and refusing to apply the mathematical formula proposed by Jay.

*Prohibited Factor.* Jay contends the court improperly considered the prohibited

factor of marital misconduct when dividing the marital property. He maintains that he did not hide assets but, instead, merely puffed up his numbers.

Former RCW 26.09.080 prohibits the consideration of “marital misconduct” when distributing marital property. “Marital misconduct” in former RCW 26.09.080 “refers to immoral or physically abusive conduct within the marital relationship[, not] gross fiscal improvidence, the squandering of marital assets or . . . the deliberate and unnecessary incurring of tax liabilities.” *In re Marriage of Steadman*, 63 Wn. App. 523, 528, 821 P.2d 59 (1991) (footnote omitted). However, misconduct that causes the dissipation of marital assets can be considered. *Muhammad*, 153 Wn.2d at 804.

Jay challenges the finding that he severely misrepresented and misled Leslie with regard to the value of Pacific Claims and Stop Loss at the time they were married. Jay also complains about the court’s statement that he was “receiving much more in value than he brought into the marriage, especially given his propensity to grossly overstate the value of his Pacific Claims interest and his Stop Loss interest.” Clerk’s Papers at 249.

While this language indicates that the court was aware of Jay’s misrepresentations, there is no showing that the court used Jay’s misconduct when dividing the marital property. In *Muhammad*, “the trial court’s oral ruling and written findings of fact, along with the questionable aspects of the property division itself, establish a clear inference

that the court improperly considered [Ms.] Gilbert's decision to obtain a protective order against [Mr.] Muhammad as 'marital misconduct.'" *Muhammad*, 153 Wn.2d at 806.

Here, there is no clear inference that the court improperly considered Jay's misconduct.

There are other reasons a court might mention Jay's misrepresentations at the trial. The court awarded Jay the same percentage of property that he brought into the marriage. When determining this percentage, the court used the inflated figures provided by Jay at the beginning of the marriage. By pointing out the misrepresentations, the court was explaining the true extent of Jay's award. In effect, the misrepresentations helped Jay rather than punished him.

Jay asserts the trial court had no reason to make statements about the misconduct unless it was to punish him. He argues that the court's division of property would be improper if the court made even one comment concerning Jay's misconduct.

Without more, this court will not assume that the motive behind the trial court's statements was to punish Jay. Here, the trial court did not treat the marriage as a long-term marriage. The court examined the source of the property. It follows then that the court would mention and consider the assets that the parties had when they entered the marriage. Mention of these assets, and their real and purported values, does not prove an

intent to punish.

Leslie argues that the court's statements do not demonstrate an intent to punish, but, instead, are comments as to Jay's credibility. In response, Jay argues that witness credibility is not the basis for the division of property. In Jay's view, believability is not a relevant factor under RCW 26.09.080.

The court's statements may or may not be conclusions about Jay's credibility concerning the figures. In any event, there is no indication that the court relied on these comments when dividing the property. The court adopted Jay's inflated figures. Given this fact, we cannot conclude that the trial court's comments were used to punish Jay.

*Application of Statutory Factors.* Jay asserts the trial court failed to consider his economic circumstances and the need for a transition to help him reenter the job market. He points out that the court's oral and written decisions did not contain discussions of the parties' ability to work, education, or job prospects. Jay also maintains that he needs more liquid assets to help him in this difficult real estate market and job market.

The trial court must consider all relevant factors. Jay testified that he was trained to be a maritime claims adjuster but felt that the maritime industries were drying up. He acknowledged that he had made no employment applications in that area. Jay also testified that he had an elementary education degree but that he was told that he would

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not be hired because of his age. Significantly, Jay presented no request for maintenance and provided no evidence as to any training he might need. Based on this record, we cannot say that the court abused its discretion when dividing the property between the parties.

Attorney Fees. Each party requests an award of attorney fees on appeal pursuant to RCW 26.09.140. Upon a request for fees and costs under RCW 26.09.140, courts will consider the “relative ability to pay” and the “arguable merit of the issues raised on appeal.” *In re Marriage of Leslie*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998). Both parties here have sufficient assets to pay their own attorney fees and costs.

We affirm the trial court and deny both parties’ requests for attorney fees.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, A.C.J.

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WE CONCUR:

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Brown, J.

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Korsmo, J.